

Chapter 12

Appeals to the Director for Additional Review

Overview

Introduction

This chapter contains an overview and three sections that describe the Director's three legal authorities when reviewing an appeal.

Three review authorities

An appeal to the Director to review a permit previously reviewed by a CAC may cite one or more legal authorities. The authorities for each of the three review processes may have slightly differing requirements which the appellant and Director must follow.

The three sections are:

1. FAC section 11512.5
 2. FAC section 14009
 3. 3 CCR section 6442 - Permit Review
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In this chapter

This chapter contains the following topics:

Topic	See Section...
Appeal to the Director--FAC Section 11512.5	12.1
Appeal to the Director--FAC Section 14009(b)	12.2
Appeal to the Director--3 CCR Section 6442 - Permit Review (by the Director)	12.3

Section 12.1

Appeal to the Director--FAC Section 11512.5

FAC §11512.5 - Appealing the decision to the Director	An appeal pursuant to FAC section 11512.5 shall be in writing and signed by the appellant or his/her authorized agent and state the grounds for the appeal. The CAC's decision shall remain in place pending the outcome of the Director's decision.
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Time frames	<ul style="list-style-type: none">• At the time of filing the appeal or within ten days thereafter, any party may make a written application to the Director to present new evidence, stating the materiality of the evidence, and the reasons why the evidence was not presented at the hearing. The Director may allow additional evidence at his/her discretion.• Thereafter, each party has ten days to rebut the evidence presented and present oral or written arguments.• If an oral argument is granted, each party has ten days before the date is set to hear the arguments; if a written argument is granted, the Director shall specify the time.
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Director's limits	<ul style="list-style-type: none">• The Director shall decide the appeal upon the evidence received at the hearing before the CAC, the argument, and any new or additional evidence the Director may have admitted.• Upon appeal, the Director may affirm, modify, or reverse the CAC's decision.
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Director's decision	A copy of the Director's decision will be given to each party.
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Judicial review	If the appellant disagrees with the Director's decision, they can seek court review of the decision within 30 days of the date of the decision. Judicial review of any of the Director's decisions pursuant to this section shall be pursuant to Code of Civil Procedure section 1094.5, and shall be limited to whether the proposed permit use is consistent with the applicable pesticide label restrictions and regulations, and whether the Director abused his/her discretion.
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Section 12.2

Appeal to the Director--FAC Section 14009(b)

FAC §14009 - DPR Director's review	Pursuant to FAC section 14009, a person <u>directly affected</u> by the CAC's decision may appeal to the Director to review the CAC's action in issuing, refusing, revoking, suspending, or conditioning a permit to use or possess a restricted material. The Director may affirm, modify, or reverse the CAC's decision.
Time frames	The Director shall act on the appeal within ten days of receipt or as soon thereafter as is practicable. The Director may stay the operation of a permit until his/her review is complete.
FAC §14009 - Director's limits	<p>In an appeal of the CAC's decision to the Director, the issues are limited to whether the:</p> <ul style="list-style-type: none">• Proposed permit's use is consistent with applicable pesticide label restrictions and applicable regulations;• CAC properly considered the provisions of FAC section 14006.5;• CAC abused his/her discretion in issuing, refusing, revoking, or conditioning the permit.
Before the public review	<ul style="list-style-type: none">• The Director shall notify directly, the affected person at least 72 hours in advance of the location and time of the public review.• Before acting on an appeal in a specified location open to the public, the Director shall review the information provided to him/her as specified in this section, if requested to do so in writing by any interested person.• The Director may request additional testimony or other evidence specified in this section at this public review from any interested person.
Judicial review	If the appellant disagrees with the Director's decision, they can seek court review of the decision within 30 days of the date of the decision. Judicial review of any of the Director's decisions pursuant to this section shall be pursuant to Code of Civil Procedure section 1094.5, and shall be limited to whether the proposed permit use is consistent with the applicable pesticide label restrictions and regulations, and whether the Director abused his/her discretion.

Section 12.3

Appeal to the Director--3 CCR Section 6442

3 CCR §6442 - Permit Review

Title 3, CCR section 6442 states the standards and procedures applicable to a review by the Director. It also states that registration of a restricted material is DPR's determination that under appropriate local conditions, the CAC may grant a restricted materials use permit.

Director's limits

- The CAC's decision in issuing, conditioning, refusing, revoking, or suspending a restricted materials permit will be reversed by the Director only for a clear abuse of discretion by the CAC in applying applicable restricted materials provisions beginning with FAC section 14001 and in regulations beginning with 3 CCR section 6400. The burden of establishing abuse of discretion is on the person requesting the review.
 - The Director's review is limited to the particular permit involved.
 - The person requesting review may request the Director to stay the operation of the permit for a limited time, or, until the matter is finally decided. The Director determines whether the stay will be granted or refused as soon as practicable.
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Before the public review

- The Director shall notify the affected person directly, at least 72 hours in advance, of the location and time of the public review.
 - Before acting on an appeal in a specified location open to the public, the Director shall review the information provided to him/her as specified in this section, if requested to do so in writing by any interested person.
 - The Director may request additional testimony or other evidence specified in this section at this public review from any interested person.
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Judicial review

If the appellant disagrees with the Director's decision, they can seek court review of the decision within 30 days of the date of the decision. Judicial review of any of the Director's decisions pursuant to this section shall be pursuant to Code of Civil Procedure section 1094.5, and shall be limited to whether the proposed permit use is consistent with the applicable pesticide label restrictions and regulations, and whether the Director abused his/her discretion.
